

January 24, 2012

Robert W. Hargreaves  
Best Best & Krieger, LLP  
74-760 Highway 111, Suite 200  
Indian Wells, CA 92210

Re: Your Request for Informal Assistance  
**Our File No. I-11-233**

Dear Mr. Hargreaves:

This letter responds to your request for advice, on behalf of Coachella Mayor Eduardo Garcia, regarding the provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission (“the Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your question is general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

Please note that the Commission does not provide advice on bodies of law outside the confines of the Act. Thus, we offer no opinion on the application of other incompatible activities and conflict-of-interest laws that may apply including, but not limited to, common law conflict of interest and Government Code Section 1090.

### QUESTION

Does the Act prohibit Mayor Garcia from taking part in decisions by Sunline Services involving the American Cab Company in light of a payment by Ambuserve, a company owned by the wife of a former co-manager of the American Cab Company, to Problosky Research for a survey related to the community’s attitude towards medical marijuana?

---

<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## CONCLUSION

Mayor Garcia does not have an economic interest in the American Cab Company merely because of the payment in question. Barring any other economic interest in the company, and any contribution from the company or a participant in the proceeding within the previous 12 months (Section 84308), Mayor Garcia is not prohibited from taking part in decisions by Sunline Services affecting American Cab.

## FACTS

You are the Assistant City Attorney for the City of Coachella and are seeking advice on behalf of Coachella Mayor Eduardo Garcia. Mayor Garcia also serves as the city's representative to Sunline Services, a joint powers agency, which provides for regional transportation within the Coachella Valley. Mayor Garcia has been asked by counsel for the American Cab Company to recuse himself from decisions by Sunline Services affecting the company because of a payment by Ambuserve, a company owned by the wife of a former co-manager of the American Cab Company, to Problosky Research for a survey related to the community's attitude towards medical marijuana.

While much of the factual circumstances of the payment remain in question, as asserted by counsel for the American Cab Company, Ambuserve's payment of \$10,000 to Problosky Research in August 2010, was a result of a request made by Mayor Garcia to Mr. Kilbanov, the husband of Ambuserve's owner and a co-manager of the American Cab Company at the time of the request. Ultimately, the payment was used by Problosky Research to conduct a survey of the community's attitude towards medical marijuana.

## ANALYSIS

### **Conflict-of-Interest Provisions**

Section 87100 prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision, within the meaning of the Act, if it is reasonably foreseeable that the governmental decision will have a material financial effect on one or more of the public official's economic interests. (Section 87103; Regulation 18700(a).) The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in a given governmental decision. (Regulation 18700(b)(1)-(8).)

Generally, the conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18700(b)(1).) A "public official" is "every member, officer, employee or consultant of a state or local government agency . . . ." (Section 82048.) As a member of the Coachella City Council and Sunline Services, Mayor Garcia is a public official within the meaning of the Act. Accordingly, Mayor Garcia may have a disqualifying conflict of interest in

any governmental decision, which has a reasonable foreseeable material financial effect on one or more of his economic interests.

To determine whether Mayor Garcia has a disqualifying conflict of interest in any particular governmental decision, Mayor Garcia must first identify his economic interests that may be affected by the decision. Economic interests from which conflicts of interests may arise are defined in Section 87103 and Regulations 18703-18703.5 and include:

- An economic interest in a business entity in which the official has a direct or indirect investment of \$2,000 or more (Section 87103(a); Regulation 18703.1(a)); or in which the official is a director, officer, partner, trustee, employee, or holds any position of management (Section 87103(d); Regulation 18703.1(b)).
- An economic interest in real property in which the official has a direct or indirect interest of \$2,000 or more. (Section 87103(b); Regulation 18703.2.)
- An economic interest in a source of income to the official, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c); Regulation 18703.3.)
- An economic interest in a source of gifts to the official if the gifts aggregate to \$420 or more within 12 months prior to the decision. (Section 87103(e); Regulation 18703.4.)
- An economic interest in the official's personal finances, including those of the official's immediate family. This is known as the "personal financial effects" rule. (Section 87103; Regulation 18703.5.)

Based upon the facts provided, Mayor Garcia does not appear to have any economic interest implicated by decisions affecting the American Cab Company. Accordingly, there is no indication that Mayor Garcia has a disqualifying conflict of interest, under the Act, in decisions affecting the company.<sup>3</sup>

### **Section 84308**

In addition to the Act's conflict-of-interest provisions, Section 84308(c) disqualifies certain officials from taking part in a governmental decision involving a license, permit, or other entitlement for use if the official has received a contribution from a party or participant in the proceeding in the previous 12 months. In pertinent part, Section 84308 states:

“Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount

---

<sup>3</sup> We note that a reportable campaign contribution does not constitute income or a gift for purposes of the Act's conflict-of-interest provisions under Section 82013(b)(1).

of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.”

Section 84308(b) potentially prohibits Mayor Garcia from taking part in a proceeding before Sunline Services if he has received a contribution from a party or participant in the proceeding. However, even assuming the payment from Ambuserve to Problosky Research constituted a contribution to Mayor Garcia from a party or participant in the current proceeding, Section 84308(b) restricts Mayor Garcia from taking part in the proceeding only if the contribution was received in the 12 months preceding the decision. Because the payment in question occurred in August 2010, it does not appear that Section 84308(b) prohibits Mayor Garcia from taking part in current decisions involving the American Cab Company.

#### **Contribution/Behested Payment**

Notwithstanding our conclusion that it does not appear that the conflict-of-interest provisions or Section 84308 prohibit Mayor Garcia from taking part in current decisions by Sunline Services involving the American Cab Company, your request poses a distinct question regarding the payment from Ambuserve to Problosky Research, which may have been a reportable contribution or behested payment. (See Section 82015.) However, because this is a question of past conduct, we must decline to provide assistance relating to this question at this time.<sup>4</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Brian G. Lau  
Counsel, Legal Division

BGL:jgl

---

<sup>4</sup> The Commission does not provide advice relating to past conduct. This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A).)